

## **REMARKS**

### ***Summary of Changes Made***

By this Amendment, claims 1, 3, 7, 10, 11, 13-16 and 34 have been amended, claims 2, 5, 6, 17-30 and 38 have been canceled, and new claims 39-42 have been added to the application. Accordingly, claims 1, 3, 4, 7-16, 34-37 and 39-42 are pending in the application. No new matter has been added to the application.

### ***Election/Restriction***

In the prior Office Action, the Examiner acknowledged applications election without traverse of Group I. To expedite prompt allowance of the claims directed to the elected invention, applicant has canceled claims 17-30 directed to the non-elected invention from the application.

### ***Claim Rejections - 35 U.S.C. §102***

In the prior Office Action, the Examiner rejected claims 1-4, 10-14 and 34 under 35 U.S.C. §102(b) as being anticipated by Gebrauchsmuster, G 82 03 991.7 (hereinafter "Gebrauchsmuster '991.7"). In view of the amendments made to claims 1 and 34 herein, reconsideration of the prior claim rejections is respectfully requested.

Gebrauchsmuster '991.7 discloses a packaging tube formed by a tube 1 and a lid 3. The tube 1 includes recesses 10 that receive lugs 6, which extend from the cylindrical margin 5 of the lid 3 and thereby secure the lid 3 to the tube 1. The English language translation of Gebrauchsmuster '991.7 states that:

When the lid is placed on, the lug snaps into the opening provided for it in the tube and thereby secures the lid against unwanted loosening from the packaging tube. By overcoming a certain force, the lid can then be removed once again from the packaging tube at any time, wherein both when the lid is placed on and when the lid is taken off the material of the packaging tube (e.g., paper or cardboard) moves out of the way of the lug and/or if the lid is made of elastic plastic the lug is moved to the side when the lid is put on or taken off.

By this amendment, claims 1 and 34 has been amended to clarify that the end cap of applicant's claimed shipping container has a cylindrical sidewall that includes an opening provided through the circular sidewall that defines a deflectable tab portion of the circular sidewall, and that the projection is formed on the deflectable tab portion of the circular sidewall. This structure of the end cap as claimed is fully illustrated in Fig. 3, and its function is explained in paragraph [0026] of the specification.

Gebrauchsmuster '991.7 does not disclose an end cap having an opening provided through a circular sidewall that defines a deflectable tab portion of the circular sidewall. The figures accompanying Gebrauchsmuster '991.7 clearly show that the circular sidewall ("cylindrical margin") of the end cap ("lid") of is not provided with any openings at all. Thus, the projection ("lug") in the end cap ("lid") disclosed in Gebrauchsmuster '991.7 is not formed on a deflectable tab portion defined by such an opening, as required by claims 1 and 34. Claims 3, 4 and 10-14 depend from claim 1 (either directly or through an intervening claim) and are thus not anticipated by Gebrauchsmuster '991.7 for the same reasons that claim 1 is not anticipated by Gebrauchsmuster '991.7.

Claims 1-4, 10, 11, 14 and 34 were also rejected under 35 U.S.C. §102(b) as being clearly anticipated by the "LCR" Dice Game photographs. As noted in the Supplemental Information Disclosure Statement filed on July 12, 2005, the "LCR" Dice Game packaging includes a clear plastic cylinder having a first open end and a second closed or sealed end. Two holes are formed in opposing sides of the plastic cylinder adjacent to the first open end. A plastic plug that includes a cylindrical portion is received within the open end of the clear plastic cylinder. The red plastic plug is retained in the first open end by a pair of opposing plastic bumps or surface projections that extend from the cylindrical portion of the plug.

As noted above, claims 1 and 34 have been amended to clarify that the end cap of applicant's claimed shipping container has a cylindrical sidewall that includes an opening provided through the circular sidewall that defines a deflectable tab portion of the circular sidewall, and that the projection is formed on the deflectable tab portion of the circular sidewall. There are no openings formed in the cylindrical portion of the plug in the "LCR" Dice Game, and thus the bumps or projections are not formed on a

deflectable tab portion defined by such an opening as required by claims 1 and 34. Claims 3, 4 and 10-14 depend from claim 1 (either directly or through an intervening claim) and are thus not anticipated by the "LCR" Dice Game for the same reasons that claim 1 is not anticipated by the "LCR" Dice Game.

Also in the prior Office Action, the Examiner rejected claims 1-3, 10, 11, 14 and 34 under 35 U.S.C. §102(b) as being clearly anticipated by Vajtay, U.S. Pat. No. 3,986,659. As noted by the Examiner, Fig. 4 of Vajtay depicts an end cap that includes arrowheads that are adapted to be received within perforations formed in a tubular container. However, there are no openings formed in the cylindrical flange of the end cap according to Vajtay, and thus the arrowheads are not formed on a deflectable tab portion defined by such an opening as required by claims 1 and 34. Claims 3, 4 and 10-14 depend from claim 1 (either directly or through an intervening claim) and are thus not anticipated by Vajtay for the same reasons that claim 1 is not anticipated by Vajtay.

Finally, the Examiner rejected claims 1-11, 14 and 34-38 under 35 U.S.C. §102(b) as being anticipated by Nowotny et al., U.S. Pat. No. 6,276,528. Nowotny et al. discloses a tubular core assembly 1 that includes a tubular body 10 with slots 20 adapted to receive radially extending tongue members 26 formed on a cylindrical periphery 24 of an annular insert 12. However, there are no openings formed in the cylindrical periphery 24 of the insert 12 according to Nowotny et al., and thus the radially extending tongue members 26 are not formed on a deflectable tab portion defined by such an opening as required by claims 1 and 34. Claims 3, 4, 7-11 and 14 depend from claim 1 (either directly or through an intervening claim), and claims 35-27 depend from claim 34 (either directly or through an intervening claim). Such claims are thus not anticipated by Nowotny et al. for the same reasons that claims 1 and 34 are not anticipated by Nowotny et al.

### ***Claim Rejections - 35 U.S.C. §103***

The Examiner also rejected claims 15 and 16 under 35 U.S.C. §103(a) as being unpatentable over any one of Gebrachsmuster '991.7, the "LCR" Dice Game, Vajtay or Nowotny et al. Claims 15 and 16, which depend from claim 1, claim the dimensions of preferred embodiments of shipping containers according to the invention. Claims 15

and 16 are thus patentable over the applied references for the same reasons that claim 1 is patentable over such references.

### ***New Claims***

Claims 39-42 have been added to the application to round out applicant's claim coverage. Claim 39 claims a method for opening a shipping container that includes a tube and an end cap having the structure as claimed in claim 1 (claim 34 has been amended to claim a method for closing a shipping container that includes a tube and an end cap having the structure as claimed in claim 1). These methods are not disclosed in the applied prior art references and are thus patentable over such references.

### ***Interview Summary***

On June 14, 2007, the undersigned counsel of record for the applicant and the Examiner participated in a telephonic interview. All of the claims as amended herein and the prior art of record were discussed. Agreement was reached that the amendments made to the claims herein are sufficient to overcome the prior art of record, as applied. However, no agreement was reached regarding the allowability of the claims. The Examiner indicated that a supplemental prior art search would need to be conducted before a final determination regarding the allowability of the claims could be made.

**Conclusion**

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

If there are any additional fees resulting from this communication, please charge the same to Deposit Account No. 18-0160, Order No. EPT-15283.

Respectfully submitted,

RANKIN, HILL, PORTER & CLARK LLP

By: /Randolph E. Digges, III/  
Randolph E. Digges, III  
Reg. No. 40590

700 Huntington Building  
925 Euclid Avenue  
Cleveland, Ohio 44115-1405  
TEL: (216) 566-9700  
FAX: (216) 566-9711  
[docketing@rankinhill.com](mailto:docketing@rankinhill.com)